



In the Matter of:

CURTIS C. OVERALL,

ARB CASE NO. 98-111

COMPLAINANT,

ALJ CASE NO. 97-ERA-53

v.

DATE: April 27, 1998

TENNESSEE VALLEY AUTHORITY,

RESPONDENT.

BEFORE: THE ADMINISTRATIVE REVIEW BOARD

ORDER OF REMAND

Respondent has filed a Petition for Review of the Recommended Decision and Order (R. D. and O.) issued by the Administrative Law Judge (ALJ) on April 1, 1998, in this case arising under Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. §5851 (1988 and Supp. V 1993).^{1/} In his decision the ALJ finds that Respondent violated the ERA, states that he subsequently will issue a supplemental order concerning fees and costs, and recommends that the Secretary issue an order providing for reinstatement and other relief. R. D. and O. at 34-37.

Regulations effective March 11, 1998, specify that the ALJ who issues a recommended decision that the complaint has merit is also to issue a preliminary order granting relief under Section 211:

(2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit and containing the relief prescribed in paragraph (c)(1) of this section, the administrative law judge shall also issue a preliminary order providing all of the relief specified in paragraph (c)(1) of this section with the exception of compensatory damages. This preliminary order shall

^{1/} The amendments to the ERA contained in the Comprehensive National Energy Policy Act of 1992, Pub. L. No. 102-486, 106 Stat. 2776 (Oct. 24, 1992), apply to this case in which the complaint was filed on January 15, 1997, after the effective date of the amendments.

constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Administrative Review Board. Any award of compensatory damages shall not be effective until the final decision is issued by the Administrative Review Board.

63 Fed. Reg. 6624 (Feb. 19, 1998), to be codified at 29 C.F.R. §24.7 (c)(2).

Accordingly, this case is remanded to the ALJ for issuance of a preliminary order awarding the relief specified in the R. D. and O. other than compensatory damages.^{2/} The ALJ's preliminary order should be issued within 20 days of the date of this order and shall constitute the preliminary order of the Secretary. When the ALJ has issued his supplemental order on attorney's fees and costs (*See* R. D. and O. at 37), he shall include that relief in his preliminary order. *See Varnadore v. Oak Ridge National Laboratory and Lockheed Martin Energy System*, Case Nos. 94-CAA-2, 94-CAA-3, Sec. Order, Sept. 11, 1995. Respondent's Petition for Review will be held in abeyance pending the ALJ's order on remand.

SO ORDERED.

KARL J. SANDSTROM
Member

PAUL GREENBERG
Member

^{2/}We emphasize that we are not requiring any changes to the R. D. and O., merely assuring that the Administrative Law Judge's responsibility to issue preliminary orders is carried out.